HIGH COURT OF CHHATTISGARH BILASPUR

CR.M.P. NO. 417 of 2007

APPLICANTS Mahendra Singh Bhatia and another

VERSUS

RESPONDENT State of Chhattisgarh

ORDER

Post on 9th October 2007

Sd/-
Dhirendra Mishra
Judge

HIGH COURT OF CHHATTISGARH BILASPUR

CR.M.P. NO. 417 of 2007

APPLICANTS

1. Mahendra Singh Bhatia
Aged about 57 years,
S/o Late Shri Harbansh Singh Bhatia, R/o Barpali Chowk, P.O. Champa District-Champa-Janjgir (CG)

2. Twinkle Alias Satvindar Singh Bhatia, Aged about 35 years, S/o Mahendra Singh Bhatia, R/o Barpali Chowk, P.O. Champa District – Champa-Janjgir (CG)

VERSUS

RESPONDENT

State of Chhattisgarh
Through Police Station
Janjgir, District-Champa-Janjgir (CG)

Present:
Mr. Kanak Tiwari, Sr. Advocate with Mr. Matin Siddiqui, Advocate for the applicants.
Mr. G.K. Beriwal, Dy. A.G. for the State/respondent.

ORDER

(Passed on 9th October 2007)

Dhirendra Mishra, J

The applicants by the instant petition under Section 482 of the Code of Criminal Procedure (for brevity 'the Code') have prayed for quashing the proceedings in Sessions Trial No. 163/07 pending in the Court of II Additional Sessions Judge (FTC), Janjgir.

2. Grievance of the applicants in the instant petition is that on the basis of report dated 14th April 2005 by Mahendra Singh offence under Sections 147, 148, 149, 294, 341, 323 and 307 of Indian Penal Code was registered by Police Station Janjgir against the applicants and other six persons. After completing investigation charge sheet was filed against them and the learned II Additional Sessions Judge (FTC) Janjgir vide order dated 6.9.2007 of Annexure A/12 framed charges under Sections 506(2), 307/34, 323/34 against applicant No. 1 Mahendra Singh whereas charges under Section 307, 323/34 have been framed against applicant No. 2 Twinkle @ Satvindar Singh.

92

3. Referring to the First Information Report of Annexure A/1, it was argued that the only allegation against applicant Mahendra Singh is that he exhorted his son and other associates who were armed with rifle, lathi, rod etc. to kill the complainant and throw him into the river and thereafter, proceeded towards Champa. There is no allegation against him that at the time of incident, he was present there. Allegation against applicant No. 2 Twinkle @ Satvindar Singh is that he was holding rifle, which he placed against the stomach of complainant and exhorted his friends to kill him. There is no allegation that he gave any blow to the complainant or his driver Jitendra Pandey. Further referring to the injury report of Jitendra Pandey and complainant Mahinder Singh, it was argued that none of the injuries were caused on vital parts of the body and there is no material available on record to frame charge under Section 307 of IPC against the applicants and the trial Court without applying its mind has mechanically frame charges against them ignoring the fact that the applicants and the complainant party are liquor contractor and because of business rivalry, there was some quarrel between the employees of both the party. However, due to business related rivalry the applicants, who were not present at the time of incident, have been falsely roped in.

4. Placing reliance on the judgments in the matters of **Hari Singh Vs. Sukhbir Singh and others**, **(1988) 4 SCC 551**, **Sanjay Kumar and another Vs. State of M.P.**, **1994 Supp (1) SCC 502** and **Sagayam Vs. State of Karnataka, (2000) 4 SCC 454**, it is argued that necessary ingredients in order to bring the case within the ambit of Section 307 are that the accused acted with such intention or knowledge and under such circumstances that if he by that act caused death, he would be guilty of murder i.e. intention or knowledge to commit murder must exist. There must be firstly intention to commit it, secondly preparation to commit it and thirdly, an attempt to commit it and when the attempt fails, crime is not complete but the law punishes for attempting the same. In the instant case, looking to the nature of allegations present in the FIR against the applicants, the statements of witnesses and injuries sustained by the complainant, ingredients of Section 307

are completely missing, therefore, the trial Court has committed illegality in framing charge under Section 307/34 of IPC.

5. It is settled law that powers under Section 482 of the Code, as held by Hon'ble the Supreme Court in the matter of **State of Haryana and others Vs. Bhajan Lal and others**, **1992 Supp (1) SCC 335,** should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. It should be exercised either to prevent abuse of the process of Court or otherwise to secure the ends of justice. In the aforesaid matter the Hon'ble Supreme Court has described some of the categories of cases by way of illustration wherein such powers could be exercised.

(1) Where the allegation made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirely do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the

(94)

concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.

6. In the instant matter, there are allegations against the applicants in the complaint as also in the statements of witnesses that they intercepted the jeep of the complainant after overtaking the same, exhorted their associates who came with them armed with weapons to murder the complainant and thereafter, assaulted the complainant and his driver Jitendra Pandey, who sustained injuries. In the above three judgments cited by the applicants, the Hon'ble Supreme Court after considering the evidence adduced during trial has disposed of the appeals preferred by the respective parties by considering the necessary ingredients of offence under Section 307 of IPC. However, at the stage of framing charge detailed examination of evidence available in the charge sheet is neither necessary nor desirable. The trial Court taking into consideration the allegations present in the FIR and the evidence available in the charge sheet has recorded a prama facie satisfaction that the above allegations constitute offence under Sections 506(2), 307/34, 323/34 of IPC against the applicants and accordingly framed the charges against them. Therefore, in the considered opinion of this Court the allegations present in the FIR and the statements of witnesses filed along with this petition, prima facie constitute cognizable offence against the applicants and the same does not fall in any one of the categories of cases mentioned in the judgment of Hon'ble Supreme Court referred to hereinabove, calling for exercise of inherent powers of this Court to

quash the criminal proceedings against the applicants or to quash the charges framed against them.

7. In the result, the instant petition being devoid of substance is liable to be dismissed at the admission stage itself and is accordingly, dismissed.

Sd/-
Dhirendra Mishra
Judge